

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 348

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO CRIMINAL LAW; EXPANDING AND CLARIFYING THE CRIMES
OF CRUELTY TO ANIMALS AND EXTREME CRUELTY TO ANIMALS;
CLARIFYING THE APPLICATION OF THE PRACTICE OF VETERINARY
MEDICINE; INCREASING THE PENALTY WHEN CRUELTY CAUSES DEATH OR
GREAT BODILY HARM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-18-1 NMSA 1978 (being Laws 1999,
Chapter 107, Section 1, as amended) is amended to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO
ANIMALS--PENALTIES--EXCEPTIONS--DEFINITIONS.--

~~[A. As used in this section, "animal" does not
include insects or reptiles.~~

~~B.]~~ A. Cruelty to animals consists of a person:

(1) [~~negligently~~] recklessly mistreating

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underscored material = new
[bracketed material] = delete

1 ~~[injuring, killing without lawful justification]~~ or tormenting
2 an animal; ~~[or]~~

3 (2) recklessly or intentionally abandoning an
4 animal under that person's custody or control; or

5 (3) recklessly or intentionally failing to
6 provide necessary sustenance to an animal under that person's
7 custody or control.

8 ~~[G. As used in Subsection B of this section,~~
9 ~~"lawful justification" means:~~

10 ~~(1) humanely destroying a sick or injured~~
11 ~~animal; or~~

12 ~~(2) protecting a person or animal from death~~
13 ~~or injury due to an attack by another animal.~~

14 ~~D.]~~ B. Whoever commits cruelty to animals is guilty
15 of a misdemeanor and ~~[shall be sentenced pursuant to the~~
16 ~~provisions of Section 31-19-1 NMSA 1978]~~ upon a fourth or
17 subsequent conviction for committing cruelty to animals, the
18 offender is guilty of a fourth degree felony ~~[and shall be~~
19 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~
20 ~~1978].~~ Whoever commits cruelty to animals that results in
21 death or great bodily harm to the animal is guilty of a fourth
22 degree felony.

23 ~~[E.]~~ C. Extreme cruelty to animals consists of a
24 person:

25 (1) intentionally or maliciously ~~[torturing,~~

underscored material = new
[bracketed material] = delete

1 ~~mutilating, injuring or poisoning~~ mistreating an animal; ~~or~~

2 (2) intentionally or maliciously killing an
3 animal without lawful justification; or

4 (3) engaging in an act of bestiality.

5 ~~[F.]~~ D. Whoever commits extreme cruelty to animals
6 is guilty of a fourth degree felony. ~~[and shall be sentenced~~
7 ~~pursuant to the provisions of Section 31-18-15 NMSA 1978.~~

8 ~~G.]~~ E. The court may order a person convicted for
9 committing cruelty to animals to participate in an animal
10 cruelty prevention program or an animal cruelty education
11 program. The court may also order a person convicted for
12 committing cruelty to animals ~~[or extreme cruelty to animals]~~
13 to obtain psychological counseling for treatment of a mental
14 health disorder if, in the court's judgment, the mental health
15 disorder contributed to the commission of the criminal offense.
16 The court shall order a person convicted of extreme cruelty to
17 animals to obtain psychological counseling. The offender shall
18 bear the expense of participating in an animal cruelty
19 prevention program, animal cruelty education program or
20 psychological counseling ordered by the court.

21 ~~[H.]~~ F. If a child is adjudicated of cruelty to
22 animals, the court shall order an assessment and any necessary
23 psychological counseling or treatment of the child.

24 ~~[I.]~~ G. The provisions of this section do not apply
25 to:

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1 (1) fishing, hunting, falconry, taking and
2 trapping, as provided in Chapter 17 NMSA 1978;

3 (2) the practice of veterinary medicine, as
4 provided in Chapter 61, Article 14 NMSA 1978, when the practice
5 is in accordance with commonly accepted veterinary practices;

6 (3) rodent or pest control, as provided in
7 Chapter 77, Article 15 NMSA 1978;

8 (4) the treatment of livestock and other
9 animals used on farms and ranches for the production of food,
10 fiber or other agricultural products, when the treatment is in
11 accordance with commonly accepted agricultural animal husbandry
12 practices;

13 (5) the use of commonly accepted Mexican and
14 American rodeo practices, unless otherwise prohibited by law;

15 (6) research facilities [~~licensed~~] registered
16 pursuant to [~~the provisions of~~] 7 U.S.C. Section 2136, except
17 when knowingly operating outside provisions governing the
18 treatment of animals of a research or maintenance protocol
19 approved by the institutional animal care and use committee of
20 the facility; or

21 (7) other [~~similar~~] commonly accepted
22 activities not otherwise prohibited by law.

23 H. If there is a dispute as to what constitutes
24 commonly accepted veterinary practices, the board of veterinary
25 medicine shall hold a hearing to determine if the practice in

1 question is a commonly accepted veterinary practice.

2 ~~[J.]~~ I. If there is a dispute as to what
3 constitutes commonly accepted agricultural animal husbandry
4 practices or commonly accepted rodeo practices, the New Mexico
5 livestock board shall hold a hearing to determine if the
6 practice in question is a commonly accepted agricultural animal
7 husbandry practice or commonly accepted rodeo practice.

8 J. As used in this section:

9 (1) "animal" means all animals, including
10 captive reptiles, but not insects;

11 (2) "bestiality" means any sexual act between
12 a person and an animal involving the sex organ of the one and
13 the mouth, anus, penis or vagina of the other;

14 (3) "great bodily harm" means an injury that
15 creates a high probability of death, that causes serious
16 disfigurement or that results in permanent or protracted loss
17 or impairment of the function of any member or organ of the
18 body;

19 (4) "lawful justification" means:

20 (a) humanely destroying a sick or
21 injured animal; or

22 (b) protecting a person or animal from
23 death or injury due to an attack by another animal;

24 (5) "mistreating" means torturing, mutilating,
25 poisoning or otherwise inflicting unnecessary physical injury

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1 upon an animal;

2 (6) "recklessly" means acting with knowledge
3 that the person's actions create a substantial and foreseeable
4 risk, disregarding the risk and being wholly indifferent to the
5 consequences and to the welfare and safety of the animal; and

6 (7) "sustenance" means food, water or shelter;
7 provided that shelter with regard to livestock shall be in
8 keeping with commonly accepted agricultural animal husbandry
9 practices."

10 SECTION 2. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.